Public Document Pack

Cherwell DISTRICT COUNCIL NORTH OXFORDSHIRE

SUPPLEMENTARY INFORMATION

Planning Committee

19 February 2015

Page	Title
(Pages 1 - 20)	Written Update

If you need any further information about the meeting please contact Aaron Hetherington, Democratic and Elections aaron.hetherington@cherwellandsouthnorthants.gov.uk, 01295 227956

CHERWELL DISTRICT COUNCIL
PLANNING COMMITTEE

19 February 2015

WRITTEN UPDATES

Agenda Item 7 **14/01778/F Campsfield House, Kidlington**

- Five letters have been received from the public. The following points have not been previously raised by other objectors:
  - Object to taxes being spent on this type of development
  - Inquiry which seeks to review the welfare of immigrants in detention announced by Home Secretary earlier this month – application should not be considered until this and the findings of the other inquiry
  - Premature in respect of the emerging Cherwell Local Plan and the Green Belt Review
  - If planning permission is granted then even if the extension doesn't go ahead the permanence and protection of the site will be weakened
  - Elected officials can take into account Government policy and budgetary constraints
  - Strong cross party and public opposition to this development

- A follow up letter from Asylum Welcome was received criticising the officer's analysis of their contention that there was a link between the size of a detention centre and the number of serious incidents taking place. They also stated that the report lacked balance, citing an absence of any criticism of the statistics presented by Government.

- A letter from a law firm, Leigh Day, (acting on behalf of members of Stop Campsfield Expansion, a local grouping of concerned groups and individuals which includes Asylum Welcome and the Campaign to Close Campsfield) was received on 17 February 2015 arguing that the Officer's report was 'plainly wrong in law'. They are critical that the applicants' 'need' case was not more critically assessed by officers. They also suggest that the alternative site analysis submitted by the applicants was flawed; and that issues regarding the layout should have been taken into consideration. A copy of that letter is attached as Appendix 1. Having taken legal advice, Officers have concluded that it is prudent to get counsel opinion to help clarify the points raised before this application is determined. As a result, it is therefore **recommended that this application be DEFERED** until counsel has reported back to officers and any necessary additional work has been

Agenda Items 8 and 9 **Discharge of Design Code conditions**

- Members are reminded that supplementary details to these items were circulated on Wednesday 18 February. Hard copies will be made available at Committee

Agenda Item 10 **14/00697/F Land of Skimmingdish Lane**

- E-mail received from CPRE

  We should like to record the fact that CPRE feels strongly that the application should be refused on the following grounds:

  - The land in question has not been allocated for development in any part of the existing or emerging Plan. Neither was it raised as an "omission site" during the recent EIP of the new Local Plan.
  - Cherwell does not need this stray 49 dwellings to meet its housing targets for Bicester, nor indeed for the District as a whole, which, though extraordinarily high, are fully catered for elsewhere in the draft Local Plan.
  - though the detailed comments from the Statutory Agencies are dubious about the proposed development, they somewhat bizarrely do not seem to have the courage of their convictions when coming to a conclusion. For example Thames Water and the Environment Agency note that the site is in a flood area and has issues with sewage disposal, water pressure and water run off. Where is the harm therefore in recommending that the site is not developed? Similarly Natural England state that the area in question should benefit from enhanced Green Infrastructure provision for 1) improved flood risk, 2) provision of accessible green space, 3) climate change adaptation, 4) biodiversity enhancement. In short building on this land will contravene Natural England's recommendations, and this needs to be clearly stated.
  - For Bicester to achieve credible Garden Town/Ecotown status it is vital that the remaining few areas of natural space are saved. To the allow development on the land in this application would negatively affect the original concept of the area being part of a linear park forming a vital wildlife corridor. As Bicester expands to meet its housing targets, this will become even more vital to retain. In general we feel the ecological value of the site is markedly undervalued.
  - From a traffic point of view the idea of having one entry and exit point that cuts across both the cycleway and footway, plus joining the already busy Skimmingdish Lane ring road on a blind bend is clearly devoid of sense.
  - Both the layout and design of the proposal stikes us as poor and cobbled together in haste and without care. This confirms our view that this it is merely a speculative application designed to exploit Cherwell's vulnerability as regards the planning system just at a time when it is about to put its long worked on Local Plan to bed. In the face of such brazen tactics, there is the every reason why the application should be refused forthwith.

- The Oxfordshire Badger Group strongly object to this application on the following grounds:

This development would negatively affect the original concept of this area as part of a linear park forming a vital wildlife corridor for badgers and other species that use the site, in an increasingly built up area.

It is in a flood plain and the land under threat constitutes wet meadowland which is a biodiversity action plan habitat and deserves protection. Only 2% of such ecology is left in the entire UK. The fact that the developers cleared and fenced the site before they have planning permission shows scant regard for the natural environment and wildlife.

To build on this land reduces the green space for Bicester's residents. When 15,000 houses are added to the town the traffic along Skimmingdish Lane will increase markedly. There may well be a need to build a dual-carriageway along this ring-road and it would be likely that the land nearest the road will be sacrificed for this purpose. Thus the land in this application needs protecting from development and retained as a green, open space for the benefit for all.

With the large number of houses in the 'emerging' Local Plan, CDC can afford to refuse these 46 houses. For Bicester to have credible 'Garden Town/Eco-Town' status, its remaining few areas of natural space must be saved. Survival of our natural animals such as badgers, bats and birds, as well as wild meadowland is becoming economically important and should not be disregarded.

Our Wildlife Trusts show that the preservation of wild spaces has real value (Ref BBOWT's conference speech 2014). Natural England state in their submission that the area in question should benefit from enhanced Green Infrastructure provision for 1) improved flood-risk management 2) provision of accessible green space 3) climate change adaptation 4) biodiversity enhancement. Just retaining the hedge is hardly adequate compensation. Building on this land will, therefore, contravene NE's recommendation.

The whole tone of the ecological report commissioned by the developer places little value on biodiversity and the protection of wildlife corridors and habitats. There has been no assessment of the wider badger population and how vulnerable they could be. Indeed, the report claims:
'that our native fauna and protected species like badgers are of negligible or only 'local' value'

We urge the planning committee to reject this wholly speculative application. Nicola Blackwood, the local MP, recently spoke of Cherwell District Council applying the NPPF more appropriately than some other Councils. By rejecting this, CDC will prove her right

- Letter received from agents acting for the owner of land on the north side of Skimmingdish Lane which has been allocated in the emerging Local Plan (as Bicester 11) for a significant scale of employment development (circa 52,500 sq. m2 or B1/B2/B8).
  They comment that

  We understand that this application was made in May 2014, and has been the subject of protracted discussions in relation to highway matters. It is surprising that we were not notified of this application as part of the pre-application process, especially given its potential implications on the access to the Bicester 11 site.

Furthermore, we noted that as part of the planning application, and the Transport Assessment supporting it, that there has been no consideration at all of the Bicester 11 site, either in terms of cumulative impact on the highway network or determining the implications of the application on the Bicester 11 site.
We note that Oxfordshire County Council, in considering the planning application, have not considered the implications of the proposal on the Bicester 11 allocation.

My clients' highway advisors, DTA Transportation, have reviewed the proposed access into the Taylor Wimpey/Persimmon site, and its impact on the proposed access into the Bicester 11 site. The Taylor Wimpey/Persimmon access would blight Albion Lands proposed access design, since the right turn lanes for both junctions are largely co-incident. For your information, I have attached a plan of the Taylor Wimpey/Persimmon proposals, including the access. You will note that when comparing this with the drawing showing the access into the Bicester 11 proposals, they coincide with both accesses.
The adverse implications on the access into Bicester 11 will fundamentally undermine the masterplan process that we have been undertaking, in discussion with your officer's. As a consequence, the Taylor Wimpey/Persimmon proposals are entirely unacceptable in terms of their highways implication on the Bicester 11 site.

In view of the above, we therefore respectfully request that the application is deferred from your committee's consideration until a fuller understanding of its implications on one of the key employment sites within town is understood, and has been taken into full account.

- E-mail received from Taylor Wimpey states;
  "I appreciate you are just trying to mediate a practical solution for all parties. We are keen to be as collaborative as possible and work with the promoters of "Bicester 11" to achieve a workable solution for all. I have spoken to Tim Waring at Quod this afternoon and we will get together after half term (when their team is back) to assist with their highways plans".

  "However, Persimmon and Taylor Wimpey's strong preference is for the application to be determined, as planned, at the Committee on Thursday. Our transport consultants have confirmed that our TA takes into account all allocated sites and is based off information provided by OCC and Cherwell. Furthermore, we have worked, at length, with Highways and your planning officers to formulate a recommended scheme, with greatly reduced unit numbers, and no objections. This detailed application has been in the public domain for months and therefore Quod's comment that this was "sprung" on them last week is not really credible – there has been detailed information of our access arrangements and Transport Assessment on your planning website since last year"

- Further e-mail received from the other joint applicant Persimmon:
  "in relation to your 3 points below we would say the following.

  Our application TA is based on OCC's traffic model for Bicester which accounts for all allocated sites in the area (IE Including Bicester 11). This means our TA does reflect the proposed allocation and its impact is fully understood in the context of PCC information.

  We are more than happy to negotiate with all stakeholders involved in this

situation. I would however point out that in order to conclude this matter in essence need a highway design in detail for Bicester 11 to allow an empirical decision to be made by all parties. Given that Bicester 11 is currently the subject of a screening opinion request surely our detailed scheme should form part of that decision in a sequential sense.

We may well find ourselves not able to review any detail on the access for some time and therefore not able to reach agreement. Regardless of the fact that we don't have any detail to agree on the access for Bicester 11, our site has limited scope for movement of its access due to third party land issues and we have spent a long time agreeing this access arrangements with OCC officers.
Clearly you have made a decision on the matter for this forthcoming committee which I would make one last request for you to reverse. However we will not let the application drift for too long given the support we currently have on the scheme from the case officer and the positive feedback we have on the matter from OCC, please bear in mind that as it currently stands there are no highways objection to the application".

.

Your officers consider that there is a need to give further consideration to the points of access to these potential development sites and consequently it is **recommended the this application be DEFERED**

1) Seek the comments of OCC as highway authority;
2) Allow the submitted TA to be updated to reflect the potential impact of Bicester 11; and
3) Enable a roundtable discussion to take place between Taylor Wimpey/ Albion Land/ CDC and agree the proposed access arrangements.

Agenda Item 11 **14/01153/F Otmoor Lodge, Horton-cum-Studley**

- A further letter has been received from solicitors acting for the applicants (Wright Hassall), which raises issues that require further investigation and as such, your officers **recommend that this application be DEFERED**

Agenda Item 12 **14/01180/F Otmoor Lodge, Horton-cum-Studley**

Application WITHDRAWN the applicant

Agenda Item 13 14/01434/F Land adj. South Side, Steeple Aston

- Two further e-mails with representations ;-

  One in support - raising the following issues:
  1. adding to the vitality of the village
  2. not an extension of the village

  One objecting to the scheme:
  1. loss of privacy to Radley Cottage
  2. loss of sunlight to Radley Cottage
  3. amended plans don't show the relationship with Radley Cottage opposite

Agenda Item 14 14/01621/F Land N of River Cherwell, Banbury

- **2nd Recommendation**

  That it is resolved that in accordance with the provisions of Regulation 24 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 that this report is approved as setting out the main reasons , considerations and measures of mitigation proposed with regards to the ES.

Agenda Item 15 14/01737/F The Paddocks, Chesterton

- amended wording for condition 21 (at applicants request):

  "Prior to the first occupation of any of the dwellings hereby approved, all of the estate roads and footpaths *serving that dwelling* (except for the final surfacing thereof) shall be laid out, constructed, lit and drained in accordance with Oxfordshire County Council's 'Conditions and Specifications for the Construction of Roads' and its subsequent amendments".

Agenda Item 16 14/01762/F Swacliffe Park Equestrian

- A letter to committee members from the residents of at Partway House Swalcliffe reaffirming their objection to the application, commenting on the content of the officer's report to committee and inviting members to visit the site (Copy attached as Appendix2).
- An email from the applicant's agent (copy attached) in response to the

above letter dated 16th February and their request for a formal site visit by the planning committee. The email sets out the applicant's concerns in relation to further delaying the determination of the application beyond its statutory determination period, how they feel that they have worked with the Council in trying to resolve the situation at Swalcliffe Park Equestrian and their intention to host a British Eventing competition on 21st and 22nd March this year

- The Chairman has received correspondence from a Member suggesting that a formal site visit to this site by the Committee would be beneficial

Agenda Item 17 14/01843/OUT Land West of Great Bourton

- The Recreation and Health Improvement Manager has confirmed that there is no requirement for an indoor or outdoor sport contribution; therefore the reference within paragraph 5.61 of the report to these requirements should be removed.

- Two further objections have been received in response to the Parish Council comments. They support the two comments set out within the report and add:
    - Many of the items listed in the PC's document are either wishful thinking, or things over which neither the PC nor the developer have any power.
    - There is unsubstantiated opinion and speculation in order to justify their support
    - Support the view that the PC's main objective is to achieve a new Village Hall.
    - There have been a number of comments on this proposal, and every single one of them has opposed the concept of a larger village hall.
    - The Chairman of the Village Hall committee in his recently published Annual Report says: ".... the Committee is of the opinion that, should the new development in GB go ahead, the village will not need the larger village hall generously being offered by the developers. Our compact hall complements larger village halls in the area, which do not suit everyone's requirements. ....."
    - The planning committee should view the Parish Council document as a partisan statement with little evidence of support from the community.

- Correspondence has been provided by one objector to Councillor Atack and the Chief Executive raising the following criticisms with the Committee report:

    1. The whole tone and thrust of the document, from paragraph 1.1 to paragraph 5.71 is very negative. In particular those paragraphs that summarise the views of relevant council officers make it clear that they disagree with many aspects of the planned development, both in general and as to the detail; for example paragraphs 3.2, 3.3 and 5.41.

    2. Against that background, the conclusions at paragraphs 5.72 and 5.73 come as a complete surprise. The recommendation to approve the application is entirely at odds with the explanations, reasoning, and

arguments that go before. The recommendation for approval is for those reasons both unreasonable and perverse. The document reveals no evidence or sensible reasoning that could support a recommendation to approve the application.

3. Paragraph 5.3 lists the reasons for the refusal of an almost identical application for the same site in 2013. Those factors have changed little since then; certainly not to the extent needed to justify a different decision. That fact further reinforces the impression that the recommendation is both unreasonable and perverse.

4. During our conversation yesterday, you explained to me that the planning officers feel at risk because of the failure on the part of CDC to have in place a relevant local plan as well as a detailed five year housing supply. These deficiencies are summarised in the document. You suspect that planning officers may have recommended approval, at least in part, because they fear that a refusal might provoke an appeal by the developers. If that is so, then the position is indefensible. A fear of an appeal cannot possibly justify an obviously unreasonable and perverse decision.

5. In any event, any decision to approve this application is plainly open to challenge by way of an application for judicial review. Judicial review proceedings are likely to be both more embarrassing and more expensive for CDC than a mere planning appeal.

6. Even accepting the predicament in which CDC finds itself having failed to complete a proper planning process, I am aware that an inquiry to look at the current version of the local plan was held late last year before an independent inspector, Mr Nigel Payne. You mentioned that the final report is expected before Easter. Surely, in those circumstances the sensible course would be for CDC to defer considerations of applications such as this until such time as the inspector's report is available. A late decision is better than a perverse one.

<u>Agenda Item 21</u> 14/02091/LB Bridge over River Swere, South Newington

- South Newington Parish Council has submitted images of inappropriate pointing that has already been carried out on the bridge
- This matter has been taken up with the County Council

<u>Agenda Item 24</u> Public Speaking and Members' Planning Code of Conduct

Additional wording to be included in the public speaking leaflet and guidance:

> "Parties who have made written representations on a planning application will be notified of the date it will be considered by Planning Committee."
>
> "There will be no extension to the 5 minute speaking period for objectors or supporters."

Additional recommendation:

1.3 To delegate authority to the Head of Law and Governance, in consultation with the Lead member for Planning and the Chairman of the Committee, to finalise the amended public speaking procedure and Members' Code of Conduct for submission to Council.

Leigh Day

Direct Dial: 020 7650 1243
Email: rstein@leighday.co.uk
Your Ref:
Our Ref: RSS/NQE/00091324/1
Date: 17 February 2015

Chief Executive
Cherwell District Council
Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

Mr Paul Ihringer
Senior Planning Officer
Cherwell District Council
Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

VIA EMAIL & POST

HIGHLY URGENT

Dear Sirs

RE: 14/01778/F: Proposed development at Campsfield House Detention Centre, Langford Lane, Kidlington

We act on behalf of members of Stop Campsfield Expansion, a local grouping of concerned groups and individuals which includes Asylum Welcome and the Campaign to Close Campsfield.

Summary

We have read the Officer's Committee Report ("OCR") for the above application due to be heard before the Committee on the 19 February 2015 and have taken Counsel's advice on the OCR. For the reasons set out below, the approach in the OCR is plainly wrong in law.

Leigh Day
London office: Priory House, 25 St John's Lane, London EC1M 4LB
DX 53326 Clerkenwell
T 0207 650 1200
F 0207 253 4433
E postbox@leighday.co.uk
W www.leighday.co.uk
Manchester office: Central Park, Northampton Road, Manchester M40 5BP

Further, it is clear to us that on the information before the Council, this application should be refused. It is for the Developer to satisfy the Council that very special circumstances to justify this inappropriate development in the greenbelt are established. The information before the Council completely fails to do this.

Put shortly, the Developer simply and clearly fails to discharge its burden of proof.

Legal errors

We do not comment here in relation to the accuracy of the summaries of the objections to the scheme made by our clients and others. We are concerned with the clear errors of law the OCR adopts in the section headed "*Planning Balance*" which is clearly a critical part of the reasoning, paragraphs 5.33-5.49.

At paragraph 5.37 the OCR repeats the erroneous approach the Council set out in its letters of 28 January 2015 and 11 December 2014 to Andrew Smith MP and Nicola Blackwood MP. The first letter from the Council's Chief Executive stated that she was "*advised that officers do not believe that the Council, as a local planning authority can seek to determine whether there is a need for additional immigration detention capacity in the UK*". The OCR notes that whilst the Home Office/MoJ had been asked to provide further clarification of the need and whether the case had been "*overstated by the Government*", the Home Office/MoJ has not done so. The OCR commented that the Home Office/MoJ's apparent reticence in providing an explanation is "unfortunate" but that Officer's approach in dealing with the issue of need was unchanged from that set out by the Council's Chief Executive:

> *"It is not the role of the Council to question the validity of Government figures including those relating to "need" within the immigration removal system. The applicants, unlike the Council, have access to the most relevant and up-to-date information available and experts in the field to interpret and analyse the information. Any attempt to interrogate the numbers would therefore be unjustified and could be seen to infer that the Council was considering the possibility that Government policy on immigration, and the statistics that support it, were wrong.*
>
> *The position adopted by planning officers in accepting the "need" at face value was confirmed to be the correct approach following discussions with the Council's Legal Team. The Council has, however, invited the applicants to submit details of the methodology used to inform their calculations. Any response received will become a matter of public record unless otherwise directed by the applicants*".

The OCR continues at paragraph 5.38 that

> *Against this backdrop, the VSC case presented by the HO requires Members to accept that there are no other viable options open to the HO to meet the need, and that assuming this hurdle is cleared, that the harm caused to the Green Belt would be outweighed by the more appropriate treatment experienced by detainees within an IRC rather than in the prison system.*

It is unreasonable and wrong in law to consider that Members are obliged (or "*required*") to accept an asserted "need" because of "Government policy on immigration" as justification for this development "at face value". The OCR fails to examine critically or at all the assertions as to what is said to be government policy and what is said to be the need asserted in relation to this "policy". Members are not "required" to accept the Home Office/MoJ's case. Simply because the Home Office/MoJ asserts something is "policy" (and especially where it refuses to supply the evidence) does not elevate its case above a usual process of scrutiny. The Council is entitled to question the evidence upon which the need/very special circumstances case is asserted where relevant to its planning decision-making; indeed it is obliged to be satisfied that the "need" case which is used to justify the "very special circumstances" of this development on a greenbelt site has been made out by the Developer.

You are referred to the clear terms in which Lord Justice Carnwath (as he then was) rejected an argument that Government aviation policy was outwith the terms of consideration of a planning decision-maker in the "Heathrow airport" case (*R. (on the application of Hillingdon LBC) v Secretary of State for Transport in* [2010] J.P.L. 976 that "*More generally, I do not accept that Bushell can be read as laying down any general rule that government "policy" is automatically outside the scope of debate at a local planning inquiry. Lord Diplock referred to the "protean" character of the word "policy", and to the wide range of types of decision to which it may be applied...*".

Further, this was not the approach adopted by Cherwell District Council when they considered the planning application for the proposed centre for asylum-seekers at Bicester (not in the Greenbelt) in 2002-3, where an Inspector was appointed by the Secretary of State to consider the application and report to the Secretary of State. Highly experienced Leading Counsel was instructed by the Home Office and Cherwell District Council in that case (which was also the subject of subsequent challenge to the High Court and on appeal to the Court of Appeal). There was no automatic exclusion of particular issues because of government policy but rather consideration of the evidence that lay behind that policy (and this was a case which pre-dated the *Heathrow airport* case by many years). There was oral evidence given by and cross-examination of relevant Government witnesses, including the Deputy Director General

at the Immigration and Nationality Directorate at the Home Office, and the Accommodation Centres Project Manager, and Cherwell District Council amongst others called Professor Goodwin-Gill, a Senior Research Fellow at All Souls College (and Professor of International Refugee Law, formerly Professor of Asylum Law).

It is trite law that an application for development should be assessed on its own planning merits, in accordance with relevant local policies, national guidance in the NPPF, and any other material planning considerations. This is what the Council is required to do in this case.

We are also concerned at other related errors in the Council's letters to Andrew Smith MP, reflected in the OCR, including the suggestion that your officers are not able to "*interrogate*" the evidence put forward by the Home Office/MoJ because the Home Office/MoJ are the "*experts in the field*" who have access to the "*most relevant and up-to-date information available*". Your officers are able to take such external advice as they consider necessary, and to take into account the representations made by others, including our clients and others who include specialised NGOs and academics operating in this field.

The Home Office/MoJ has not put forward this evidence base, despite it having been requested by the Council.

If the Home Office/MoJ puts forward insufficient evidence to justify the need which it asserts, that is a straightforward basis for refusal. It is not a basis for simply deferring to the Home Office's "experts".

We are also concerned at the lawfulness of the approach to the assessment of alternative sites. As this is a greenbelt case and given the clear planning objections to the use of the site, the availability of other alternative sites is a central issue, see *R (Langley Park School for Girls Governing Body) v Bromely London Borough Council* [2010] 1 P&CR 10 and we refer you also to the Planning Encyclopaedia at P70.32.

There is no planning reason to limit consideration of alternative sites to those "*in Home Office ownership*". The search for an alternative site must be reasonable, which includes that it must be done using reasonable criteria. There is no reasonable basis as to why a developer should automatically limit its search for alternative sites to sites which are already within its ownership. If this were the case, developers would routinely use this criteria to avoid carrying out a reasonable search and defeat the purpose of requiring a reasonable search. This is particularly the case where this search criteria have been used to narrow the selection of sites such that the site now being proposed is a greenbelt site where very special considerations are required.

The justification for this criteria given by the Home Office/MoJ is that a "significant investment and a long term commitment" is required. The OCR report refers to this criteria as being "*an entirely reasonable requirement as it would not only be difficult to justify public expenditure on building works without a long-term occupancy guarantee, it would also make more political/financial sense to target resources at the HO/MoJ's own portfolio of buildings".*

The need for a "long-term occupancy guarantee" is not a reasonable reason to justify this criteria. It does not justify why a search applying normal, reasonable criteria allowing for the purchase of a suitable site at reasonable market value could not be undertaken. An occupancy guarantee can be obtained in a number of ways, including for example usual commercial negotiations as to the terms of a lease or its extension; purchase of a freehold interest; and further security of tenure is obtained as of right in a commercial landlord and tenant relationship under and subject to the terms of the Landlord and Tenant Act 1954 unless expressly excluded by the parties. The Home Office/MoJ could clearly purchase a freehold or leasehold interest in an alternative site if it so wished. This is an unreasonable and unjustified approach to setting criteria for a search to justify a greenbelt development. This is particularly the case when it is selected as the first criteria, meaning that there can be no critical appraisal of an otherwise highly suitable site against the development of a greenbelt site.

In any event, this criteria does not itself explain why four other specific sites have been rejected, given that for example a lease extension could be negotiated from a landlord, or indeed obtained under the Landlord and Tenant Act 1954.

Further, as to the reasonableness of the first criteria being set on the basis of it being said to make "*political/financial sense to target resources at the HO/MoJ's own portfolio of buildings".* This is not reasonable. There is no basis on which "*political... sense"* is a justification. In relation to "*financial... sense"*, simply because development may be more expensive because the site is not already in the developer's ownership it not a reasonable reason to automatically exclude it from the search criteria, and particularly not where such a search is then used as part of the justification of "very special circumstances" to justify development on a greenbelt site. It is for the Home Office/MoJ to put forward evidence to support its asserted financial, budgetary and value for money case (which overlaps in the asserted criteria). There is no independent or other viability assessment to support the Home Office/MoJ's assertions, which are in the context of a many billion pound budget. It is wrong in law to consider that "*such a debate is academic"* because the Council "*is not in a position to run an audit of Government finances"* (OCR para 5.46). The different costs of different possible schemes on alternative sites are highly relevant to considering whether or not "very special circumstances" exist to justify development on this site.

The search criteria are not reasonable and the evidence presented to assess them is plainly insufficient.

These issues around asserted budgetary constraints also apply to the site at Bicester. It is insufficient to simply assert that a nearby site at Bicester, which has previously benefited from planning permission, and which of its own would very nearly achieve the entire number of bed spaces which the Home Office/MoJ asserts is required (800) because "*the Home Office budget would not enable such a large centre to be built*". There is no evidence supplied to support this assertion in relation to the Home Office budget, instead it is asserted that the Home Office has instead chosen to sell the site and seek expansion of existing IRC sites instead. This is highly relevant to a proper lawful appraisal of the "need" case to instead justify development on a greenbelt site.

It is for a developer to justify its case that very special circumstances exist and the Home Office/MoJ has failed to do so.

There are two other points which we wish to raise shortly. First, the "need" for this site is also linked to issues around the efficiency and operational use of the Home Office/MoJ's existing facilities. It is relevant to the justification of a location of a site in the greenbelt if such a development can be avoided by better, more efficient or different use of existing facilities (expressly including Yarls Wood). We do not repeat the representations made by our clients and others save to emphasise that this is a lawful planning consideration, the OCR has not assessed this factor adequately or at all (other than in a limited way in relation to Yarls Wood). Nor is there any convincing explanation in relation to Yarls Wood (as the OCR recognises at paragraph 5.43) and thus the conclusion at paragraph 5.49 is not sound.

Second, the Home Office/MoJ's assertions in this case that various matters are not "planning matters" is wrong in law. For example, the Home Office/MoJ states that the "*standard of accommodation – including standards for living space, care and separation unit and mosque*" is "*not a planning matter*" is also wrong in law. These are precisely the type of matters on which planning officers are able to exercise a planning judgment, in accordance with usual policies, national guidance, and any other material considerations. As is apparent from the decision in the Bicester case, *inter alia* a variety of planning issues (including the rights and needs of asylum seekers in relation to the provision of services at the Centre) were considered in the Bicester application. In this regard, we consider

(i) Simply because the buildings are "functional" does not mean they should therefore have "no architectural merit". Planning Officers should appraise the scheme on its merits in accordance with usual planning policies.

(ii) We do not accept that it is "*impossible for Officers to comment in any detail on the internal layout*" (OCR paragraph 5.19) nor that it is "*not the responsibility of the Council to provide critical analysis*" as to whether or not proposed conditions would compromise the human rights of detainees. Leaving aside that it is trite law that Members should consider the impact of a planning decision on an individual's human rights, usual planning policies (such as standards for living space, outdoor space, etc) are plainly a relevant planning matter and Officers should provide Members with relevant guidance. Whilst security concerns may impact to a degree the analysis, it does not make it impossible to comment. Floor-plans are often in any event indicative and the Council will regularly impose controls by way of condition on the use of internal floorspace in larger commercial schemes. There is no planning reason why Members could not impose suitable conditions to secure compliance with usual planning policies such as standards for living space and access to outdoor space

(iii) General planning principles for example which underlie "security by design" are planning matters. The OCR refers to the "*reasonably strong correlation*" which Asylum Welcome has explained between larger centres and the number of serious incidents. This is also a relevant consideration when considering the need case, given that it would be possible for the Home Office/MoJ to bring forward smaller applications on a variety of sites.

We are deeply concerned at the lack of critical appraisal in the OCR.

Yours faithfully,

[redacted]

Leigh Day

Cc Cllr Rose Stratford and Cllr Colin Clarke, Chair and Vice Chair of Planning Committee
Andrew Smith MP
Nicola Blackwood MP

VIA EMAIL & POST

Appendix 2 Letter associated with Appendix Item 16

To : Cherwell Planning Committee : Feb 19, 2015
Ref: Application 14/01762 – Swalcliffe Park Equestrian (SPE)
From: Marc and Brenda Vandamme
Partway House
Swalcliffe, OX15 5HA

Date : Monday February 16, 2015

Dear Committee Member,

We live on the border of the red-lined area of the above Application. Our House is marked "B" in Plan #CDC-01 of Mr. Bob Neville's recommendation to you for this Application. We have been in our house since 2004.

The land around our house has been farmland for over 100 years. We enjoy views of the wonderful High Value Landscape as well as peace and tranquillity. We do not understand why Cherwell Council has even entertained the above Application , which threatens to ruin our amenity , and alter our Conservation Villages forever. This Application will cause major traffic, noise, and threatens the character of the environment.

We hope that you will refuse this Application and, if not, at the very least, make a Site Visit to more fully understand the details of this development proposal in the context of the "Site" and its surrounding neighbours and High Value Landscape. A site visit would greatly help the Committee to fully assess the impact of this major Application on its locality.

This Application is especially flawed for the following reasons:

Usage
1) How can a Proposal that is for Mixed Use between part agricultural and part Equestrian ask for 365 days of equestrian ? This does not make sense. At best , it should be for 6 months.

Request for Confirmation
2) In this 3rd Application, the Applicant wants to have schooling, training and competitions for up to 50 horses 365 days per year. Mr. Neville has not addressed the competitions issue for up to 50 horses in his Recommendation. We assume , therefore, that the Applicant is not allowed competitions for under 50 horses. Is this correct ?

Exclusion Zone for Noise and Infringement on Privacy
3) The Area of Schooling and Training has been amended from a rather small area of 14 hectares to an Area now of 39 hectares. If the purpose is training , why do they need to come right to our back door? Why has there been no exclusion zone set after the Applicant altered their plans and would therefore have 365 days up to the borders of all 3 main objectors. The Consultations since the Amended Planning Statement have been poor to say the least , except for Rob Lowther who needless to say is as confused as we are as to the Large Event Management Plans .
Mr. Lowther agrees that when the parking (800 vehicles)or the dressage is up against our house ,there will be far more noise than in the Sept 21 Noise report as the activities were in far more distant locations . Rob Lowther said that further studies would be needed to examine the consequences of the Applicant's various Option 1,2,and 3 Event Management Plans.
Furthermore, why does the Council feel that 8 am to 8pm are adequate hours to safeguard our amenity. Has Mr. Neville ever been to a horseshow?

Overflow Parking in Field
4) Mr. Neville also does not address the parking situation posed by the " Overflow

Parking " shaded section in the Amended Statement to be used for schooling and training. Therefore ,we conclude that Mr. Neville is not allowing any Overflow Parking on the field of High Landscape Value. He also acknowledges that it is unfortunate not to have the amended drawings to the New Enlarged Parking but nevertheless feels comfortable moving forward with an incomplete proposal. How is this possible when the Cherwell Landscape Officer has not been happy with any of the drawings. The parking will have spaces for up to 30 HGV 12-15 ton horse lorries which will tower over the small farmhouse w/stables and will be an eyesore for anyone coming down or up Grange Lane. Together with the Anaerobic Digester , there will be continued deterioration of the environment and ecology and High Landscape Value.

Enforcement

5) Since August 2013 , when we made a complaint because of intensification of use by SPE as they were clearly abusing the 28 day PDR , the Council has done nothing to look at the possibility of Enforcement to punish the numerous breaches to planning laws. How is it possible that Emily Shaw on Feb 13, 2014 said that should no application for a Certificate of Lawful Development be forthcoming, the Local Planning Authority would take expedient enforcement action.
We are now Feb 19 , 2015 and there has never been any application for Certificate of Lawful Development. And, the Council has admitted in Court on Feb 2,'15 to the Judge that they have no Enforcement file ! What kind of precedent is this?
Trying to correct the breaches of planning by pushing through a bad Application is not the answer. Actually, it is a very dangerous precedent to set.

6) If the Council had correctly enforced , SPE would not have been allowed to intensify activity even more since August 2013 and we, the Objectors, would not have to go to the High Court to get planning laws implemented such as Enforcement .
Therefore what is the purpose of Bob Neville's mentioning that the Council may have to compensate SPE should they have Article 4 imposed. This is completely off the subject and should not be of influence to a Planning Committee.

7) Traffic
It remains very puzzling why the Oxford County Council Officer does not view the traffic increase through the villages of 80-90% for the Large Events as unacceptable. How is it feasible for the Applicant to be responsible for such a vast increase and for the rest of the village residents to suffer? This is not sustainable development . There are many other equestrian sites nearby with better facilities so why promote more driving , more pollution, and more congestion. The Officer has not made a Site visit to examine the Amended Planning Statement nor has he had the courtesy to discuss the issues with our Planning Consultant.
Traffic flow could be reversed such that it would avoid all 3 Conservation Villages and yet, the Council never once has looked at the traffic alternatives. Why would the Council instead approve traffic going through all 3 villages plus traffic having to drive an extra 5 miles to get to the Event entrance. The Cherwell Traffic Consultation makes no sense.

Finally, the Application is too confusing, too broad, and inconsistent. It is impossible to imagine how it will work and how it could ever be policed. As neighbours, we want to have more certainties about dates , times, locations, events, noise measures, traffic plans, and we want the Council to explain how they will be policing this Applicant.
The Applicant does not have a good track record to obey the 28 PDR so we want to know specifically how the Council will enforce, the measures, the timing, the level of noise, the storage of "unused equipment" , who will be in charge, contact details . All of these points have not been considered and we feel this Application will cause us undue harm to our amenity, our human rights to enjoy our home and our privacy, and harassment from 365 days with horses , people, and cars ruining our tranquillity. This is not acceptable.

Appendix 3 E-mail response to letter at appendix 2 (re Agenda Item 16)

From: Katie Delaney_PWA Planning
Sent: 18 February 2015 19:12
To: Bob Neville
Cc: Sarah Beveridge
Subject: Swalcliffe Park Equestrian - Application 14/01762/F
Importance: High

Following the letter which has been circulated by Marc and Brenda Vandamme (dated Monday 16th February) I write to reiterate the applicant's request that the application be dealt with as a matter of urgency. I see no reason whatsoever that a formal site visit by members must be taken, there are no special site characteristics to be considered prior to determination of the application and indeed the case officer has visited the site and find the proposals to be appropriate for this location. I understand that others have also visited the site on an informal basis. Indeed there is no significant built development proposed and given that the land is for the main part not actively used for equestrian purposes (there are only a handful of large events during the year) it would seem there is little merit in a site visit if its purpose is to understand the scale of events. It is considered that Marc and Brenda Vandamme are attempting to cause yet further distress to the applicant and threaten further the continuation of their business.

Ms Vandamme notes in her letter that the land surrounding her home has been farmed for 100 years, and indeed it has by the Taylor Family who continue to manage the land with the utmost consideration of neighbours and of the environment demonstrating excellent stewardship. The family have diversified the farm business in many ways over recent years to meet the demands of modern farming, not only have they developed this equestrian business about which this application relates but they also have a popular established B&B, have installed an anaerobic digester, farm 1800 acres of arable crops and one member of the Taylor family also runs a well-regarded local catering business. In all of their endeavours the Taylor family strive to respect the local community of which they are active members. The continued efforts by objectors has seen the Taylor family suffer a great amount of stress for over two years and I would urge the Council to prevent as far as possible any further delay to reaching a conclusion on the matter, which is clearly best for all of those involved.
The applicant has for some time now been attempting to resolve the matter of their continued use of their land for equestrian purposes. I would remind you that Barbara Taylor sought initial advice from the Council in 1997 at the very beginning of the equestrian activities on site and was advised to proceed, and that planning permission was not required for low level activity. Equestrian activity has continued on the site ever since. Upon the request of the Council we originally submitted an application for the everyday schooling at their premises in May 2014, which was later recommended for approval by the Council's officers. Unfortunately, the nature of that application meant that no large events whatsoever could be held on site, an eventuality which would have a severe impact on the business and its income. As such, we prepared and submitted a further application to include all activities on the site, large events and everyday schooling, which is now before the Council with an officer recommendation for approval. The approval brings with it various conditions, all of which the Taylor family are happy to accept and abide by in order to ensure the business can continue with minimal impact upon neighbours and the village community.

Lastly, the applicant intends to host a British Eventing competition on 21st and 22nd March this year, an annual competition held at Swalcliffe Park which brings a great benefit to the local community and local businesses. A further delay in the consideration of this planning application will place this established local rural business at even greater risk of collapse due to the continued efforts of some neighbours and objectors to see Swalcliffe Park Equestrian put out of business.

We have previously granted the Council an extension of time to the 20th February following the application not being dealt with within the statutory determination period. Throughout the process we have I believe made every effort to assist you in providing additional information and remain hopeful that your recommendation will be carried forward by members at the committee meeting tomorrow evening (19th Feb).